

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JAMES BRISTOW and LATEEFA STARKS,

Case No. 2:22-cv-01092-APG-EJY

Plaintiffs,

v.

YUDEL OMAR SANCHEZ; LVMPD  
OFFICER D. SUTTON P#15153; LVMPD  
DETECTIVE C. REICH P#9357; CLARK  
COUNTY; KRISTINA WILDEVELD, ESQ.;  
KENNETH FRIZZELL, III, ESQ.; HON.  
JUSTICE OF THE PEACE DIANA L.  
SULLIVAN; GREGORY DENUÉ, JUDGE  
PRO TEM,

Defendants.

**Order**

Plaintiffs James Bristow and Lateefa Starks filed this lawsuit on July 11, 2022. ECF No.

1. Federal Rule of Civil Procedure 4(m) requires the plaintiffs to serve process on the defendants within 90 days of filing the complaint, which would have been October 10, 2022. The plaintiffs filed proofs of service showing that they attempted to serve the defendants by certified mail. ECF No. 4. But that is not a proper method of service under Federal Rules of Civil Procedure 4(c), (e), and (j). Indeed, two of the defendants have filed notices of improper service. ECF Nos. 12, 13. Thus, it appears that the plaintiffs have not timely or properly served the defendants. Under Rule 4(m), I must dismiss this lawsuit without prejudice or extend the time for service if the plaintiffs show good cause for their failure to timely serve. Consequently, I ordered the plaintiffs to show cause why this case should not be dismissed for their failure to timely and properly serve the defendants. ECF No. 20.

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1 The plaintiffs respond that service was proper because the summons and complaint were  
2 delivered by a postal employee who is a non-party over the age of 18. Alternatively, the  
3 plaintiffs request additional time to serve the defendants.

4 “[S]ervice of process is the means by which a court asserts its jurisdiction over the  
5 person.” *S.E.C. v. Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007). If proper service of process is not  
6 accomplished, I lack the power to render a judgment against a defendant. *Id.*

7 Federal Rule of Civil Procedure 4(c)(1) requires a plaintiff to serve the defendant with a  
8 summons and a copy of the complaint. Under Rule 4(m), service must be accomplished within  
9 90 days after the complaint was filed. If proper service is not timely made, I “must dismiss the  
10 action without prejudice against that defendant or order that service be made within a specified  
11 time.” Fed. R. Civ. P. 4(m).

12 The plaintiffs sue numerous individuals (including government officials for acts done in  
13 performance of their official duties), and Clark County.<sup>1</sup> Rule 4(e) provides that an individual  
14 can be served by following the law governing service of process “in the state where the district  
15 court is located or where service is made,” or by personal delivery, by leaving process at the  
16 individual’s dwelling with a person of suitable age and discretion residing there, or by delivering  
17 process to an agent “authorized by appointment or by law to receive service of process.” Nevada  
18 rules for service on an individual mirror those of Rule 4(e)(2). Nev. R. Civ. P. 4.2(a)(1)-(3).

19 Rule 4(j)(2) provides that a “state-created governmental organization that is subject to  
20 suit must be served by: (A) delivering a copy of the summons and of the complaint to its chief  
21 executive officer; or (B) serving a copy of each in the manner prescribed by that state’s law for  
22 serving a summons or like process on such a defendant.” Under Nevada law, a county “must be  
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<sup>1</sup> I previously dismissed the United States for failure to state a claim. ECF No. 19.

1 served by delivering a copy of the summons and complaint to the presiding officer of the  
2 governing body of the political subdivision, or an agent designated by the presiding officer to  
3 receive service of process.” Nev. R. Civ. P. 4.2(d)(3). And “[a]ny current or former public  
4 officer or employee of any county, city, town, or other political subdivision of the State, or any  
5 public entity of such a political subdivision, who is sued in his or her official capacity or his or  
6 her individual capacity for an act or omission relating to his or her public duties or employment  
7 must be served by delivering a copy of the summons and complaint to the current or former  
8 public officer or employee, or an agent designated by him or her to receive service of process.”  
9 Nev. R. Civ. P. 4.2(d)(4).

10 Both Nevada and federal law require personal service, “which means hand-delivery to the  
11 individual, or to the individual’s authorized agent, by someone who is at least 18 years old and  
12 not a party to the litigation.” *Johnson v. Clark Cnty. Sch. Dist.*, No. 2:14-cv-02213-JAD-VCF,  
13 2016 WL 3156059, at \*1 (D. Nev. June 3, 2016), *aff’d*, 690 F. App’x 943 (9th Cir. 2017).  
14 Attempts to serve individual defendants by certified mail are deficient under both federal and  
15 Nevada law. *See id.*; *Vaughn v. Nash*, No. 2:15-cv-02137-APG-PAL, 2018 WL 6055552, at \*3  
16 (D. Nev. Oct. 29, 2018), *report and recommendation adopted*, No. 2:15-cv-02137-APG-PAL,  
17 2018 WL 6046168 (D. Nev. Nov. 19, 2018).

18 Because the plaintiffs have attempted to serve the defendants only via certified mail, none  
19 of the remaining defendants was properly served within 90 days of the complaint being filed.  
20 Even if certified mail could suffice, the plaintiffs do not provide signed certified returns and  
21 there is no evidence that anyone who signed the certified return receipts is qualified under the  
22 Rules to accept service on behalf of the defendants. However, I grant the plaintiffs additional  
23 time under Rule 4(m) to properly serve the defendants. The plaintiffs have until December 30,

1 2022 to properly serve each of the remaining defendants. Failure to do so will result in dismissal  
2 without prejudice of the plaintiffs' claims against any unserved defendant.

3 Finally, I note that only one of the plaintiffs signed the response to the order to show  
4 cause. ECF No. 22 at 7. The plaintiffs each may proceed pro se, but one may not represent the  
5 other because a pro se litigant has no authority to act as an attorney for others. *See C.E. Pope*  
6 *Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987). Thus, all filings that are meant  
7 to be filed on behalf of both plaintiffs must be signed by both.

8 I THEREFORE ORDER that the plaintiffs have until **December 30, 2022** to properly  
9 serve each of the remaining defendants. Failure to do so will result in dismissal without  
10 prejudice of the plaintiffs' claims against any unserved defendant.

11 I FURTHER ORDER that the plaintiffs' motion for summary judgment (**ECF No. 5**) is  
12 **DENIED as premature.**

13 DATED THIS 1st day of November, 2022.

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16 ANDREW P. GORDON  
17 UNITED STATES DISTRICT JUDGE  
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